

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

04 APR 12 AM 10:08

U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA,

vs.

RICHARD M. SCRUSHY,

Defendant.

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Case No. CR-03-BE-530-S

W3

ENTERED

APR 12 2004

REPORT AND RECOMMENDATION

In an earlier motion, the defendant sought access to the transcripts of grand jury proceedings leading to the return of the present indictment, arguing that because HealthSouth Corporation is a large employer in this district, he should be allowed to discover whether the Government took steps to screen grand jurors with a bias related to HealthSouth. The court ordered, alternatively, that the Government was required to submit for *in camera* review the transcripts of grand jury proceedings evidencing such efforts, which Government submitted to the undersigned on March 18, 2004. Having carefully reviewed these transcripts, the court is persuaded that the Government did take adequate steps to assure that no grand juror with a bias related to HealthSouth or the defendant participated in consideration of this indictment.

Without revealing the contents of secret grand jury proceedings, the transcripts of those proceedings establish that, when the grand jury was organized on September 18, 2002, the late U.S. District Judge Edwin Nelson explicitly instructed the grand jurors as follows:

If a member of the grand jury is related either by blood or marriage to any person who is under investigation or, for any reason, has any bias or prejudice against a person or in favor of the Government in a particular instance, that juror should not participate in the investigation or the return of an indictment. Now, this doesn't mean that if you have an opinion you ought not to participate. It does mean that if you have heard any evidence about it, either on the basis of friendship or hatred or

race or color, age, whatever, then you should not participate in the investigation and should not vote on the return of any indictment.

Furthermore, at the beginning of grand jury proceedings on March 20, 2003, Assistant United States Attorney Pat Meadows clearly warned grand jurors that matters related to HealthSouth and defendant would be considered at that time and that grand jurors “connected in any way with HealthSouth Corporation” should not participate in the proceedings about to occur. He explained that grand jurors should not participate “[i]f you’re personal friends with any of the corporate officers, or if you work there, or if you have close friends who work there, or anything like that?” He repeated that “if for any reason you feel like the information concerning HealthSouth and the allegations that are going to be made would make you uncomfortable or cause you stress or anything like that, you need to let me know and probably excuse yourself on this portion of the Grand Jury’s work.” No grand jurors reported any such bias.

The court is persuaded that the combination of the instructions given by Judge Nelson and the inquiries made by AUSA Meadows sufficiently alerted grand jurors to their duty to avoid participating in the consideration and return of the indictment in this case if they had any bias arising from any connection to HealthSouth. Insofar as the motion seeks dismissal of the indictment on the ground that the Government did not take adequate steps to screen the grand jury for members with a HealthSouth-related bias, the undersigned RECOMMENDS that it be DENIED.

It is further ORDERED that the transcripts of grand jury proceeds submitted to the court for *in camera* review be filed under seal.

Any party may file specific written objections to this report and recommendation within fifteen (15) days from the date it is filed in the office of the Clerk. Failure to file written objections

to the proposed findings and recommendations contained in this report and recommendation within fifteen (15) days from the date it is filed shall bar an aggrieved party from attacking the factual findings on appeal. Written objections shall specifically identify the portions of the proposed findings and recommendation to which objection is made and the specific basis for objection. A copy of the objections must be served upon all other parties to the action.

The Clerk is DIRECTED to forward a copy of the foregoing to all counsel of record.

DONE this the 12th day of April, 2004.

A handwritten signature in black ink, appearing to read 'T. Michael Putnam', written over a horizontal line.

T. MICHAEL PUTNAM
UNITED STATES MAGISTRATE JUDGE